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**SMITH  
STONE  
WALTERS**

UK Immigration Practice

# INSIGHT

UK IMMIGRATION NEWS & VIEWS  
FROM SMITH STONE WALTERS  
AUTUMN 2015

*Will new  
Tier 2 rules  
harm the  
economy?*



# SKILLED MIGRATION, STRIKING THE RIGHT BALANCE



*Tier 2 of the Points Based System is the primary route for economic migration to the UK. It is the route of choice for skilled workers from outside the European Economic Area (EEA) who have received an offer of skilled employment in the UK.*

As the UK economy goes from strength to strength, the need for UK PLC to engage overseas employees in order to fill skills shortages is on the rise and shows no sign of abating. To create further growth and job creation, UK businesses rely on a stable and well managed immigration system. With the hardening of political attitudes towards migrants and the government's fixation on reducing net migration, however, the Tier 2 scheme has come under heavy scrutiny and is now being primed for change.

Employers have already been adversely affected by the ‘migrant cap’ this year and business leaders fear that any further efforts to diminish the attractiveness of the Tier 2 scheme would come at a huge cost to the economy.

## CALL FOR EVIDENCE

A new, independent review of the Tier 2 immigration route has been commissioned with the specific purpose of “significantly reducing the level” of skilled migration to the UK. Over the forthcoming months, the MAC (Migration Advisory Committee) will assess the existing Tier 2 scheme and present its recommendations to the government. Key areas of change which the MAC has been asked to examine include:

- Raising the current minimum Tier 2 salary levels;
- Introducing a potential skills levy on businesses recruiting from outside the EEA, the proceeds of which would fund apprenticeships in the UK;
- Considering the impact of removing the automatic right of Tier 2 dependants to work in the UK; and
- Considering a tightening up of the intra-company transfer (ICT) route, for example by applying the Immigration Health Surcharge.

Once the government has reviewed the MAC’s findings, decisions will be made as to which changes are

necessary to the present scheme. For many UK employers, the current immigration system is already too restrictive and there is a real concern that any additional constraints to Tier 2 will only further damage their ability to plug genuine UK skill shortages by employing overseas workers.

Since the introduction of the Points Based System in 2008, a series of tighter controls and restrictions have been introduced to ensure that Tier 2 visas are only granted to migrants for roles in the workforce which cannot be filled by settled workers.

During the recession in 2011, the coalition government capped the number of skilled non-EU migrants allowed to enter the UK at 20,700 per year. Until recently, the route has been undersubscribed and therefore this limit was never reached. However, the cap was hit for the first time in June 2015 and led to the rejection of more than 1,300 legitimate requests by UK businesses to employ overseas staff.

A similarly significant number of requests were rejected under the ‘migrant cap’ this July, leaving the recruitment plans and scheduled graduate programmes of many UK businesses once again in the dust. August saw the situation improve somewhat with the minimum salary requirement returning to just above its original figure, thereby allowing many more employment requests to be granted.

## IMPACT ON THE UK ECONOMY

If the government is committed to delivering a balanced migration system, it must factor in the need for UK businesses to fill important roles within their operations.

UK PLC is competing on an increasingly global scale for talented employees and with many more UK businesses establishing overseas operations, a globally-mobile workforce is essential. To maintain its international reputation as a place to invest, the UK must be careful to keep its borders open to the right talent and allow UK businesses to flourish and grow within the global market.

Never has there been a better time for the current government to recognise that its relentless target of reducing net migration is beginning to hurt growth.

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## SMITH STONE WALTERS

*In this edition of Insight, you will find a number of interesting articles relating to UK immigration. The Focus section concentrates on the acquisition of a Sole Representative Visa and is a must-read for overseas businesses looking to establish a UK hub. We also present our top ten tips for those applying from overseas to enter the UK. For regular updates on all UK immigration matters, make sure you are signed up to receive our free updates via [www.smithstonewalters.com/signup](http://www.smithstonewalters.com/signup).*

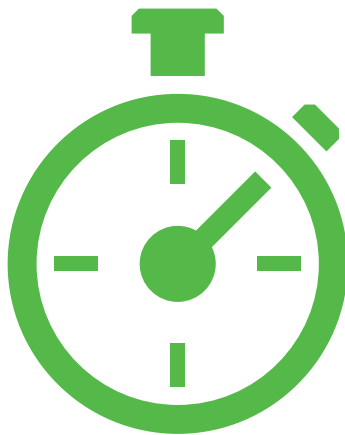
# TOP 10 UK VISA TIPS

*We have put together a list of Top Tips for those applying for visa clearance to the UK. There are a number of things to remember before, during and after the submission of your application, which will help your chances of success.*

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## 01 DON'T LEAVE IT TOO LATE!

Apply for your UK visa as early as possible to allow for any issues which may crop up during the course of your application. It is quite possible that you will experience a few bumps in the road which could slow matters down.



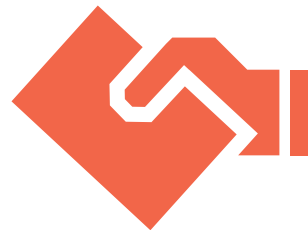
## 02 DO YOUR HOMEWORK

Find out what the requirements are for the desired visa category before you apply. It may be that your application is better suited to a different visa category from the one you originally wished to apply for.



## 03 SUBMIT ORIGINAL DOCUMENTS

You must submit original documents, including your passport, as part of your visa application. Depending upon your visa category, this means that you may not be in possession of your passport for up to eight weeks.



## 04 APPLY FROM YOUR HOME COUNTRY



Always apply for your UK visa from a Visa Application Centre (VAC) in your home country or country of residence. If you attempt to apply from anywhere else your application is unlikely to be accepted and you will be forced to return to your home country before trying again.



## 05 BE A COPYCAT



Make copies of every original document which you submit with your application, including the application form. This will be useful if there is any problem with your submission or in case any of your documents are lost. Don't forget to bring these copies with you to the UK!

## 06 KEEP CALM AND SPEAK ENGLISH!

Find out in good time whether or not you must pass an English Language Test as part of your application, as you may need to travel to reach your nearest Home Office approved test centre. Results can be expected two weeks after the examination date.



## 07 TUBERCULOSIS TEST



There are **100** countries from which applicants must undergo a TB test so it is highly likely that this will be required as part of your application. Tests must be taken at an approved test centre and results certificates will only remain valid for a period of six months.

## 08 HOLD OFF ON THE TRAVEL PLANS

Avoid booking international travel whilst not in possession of your passport or before receiving your UK visa – you never know what may happen!



## 09 PROVIDE TRANSLATIONS

...of any document which you are not able to secure in English. These translations must be produced by a certified translator.



## 10 ...AND ONE LAST THING



If you are successful in your visa request, you will be issued with a short-term travel vignette enabling you to travel to the UK. Once in the UK you will have 10 days within which to collect your Biometric Residence Permit (BRP). This BRP will remain the main proof of your immigration status for the duration of your stay in the UK.

# TIER 2 RESTRICTED COS ALLOCATIONS BACK ON TRACK!



*Following disastrously low allocations of restricted CoS for many UK employers in June and July, figures for August suggest that the situation may be improving.*

The allocation of a Tier 2 restricted CoS (Certificate of Sponsorship) is an essential step in the hiring of a Tier 2 migrant employee and yet, due to the migrant cap, there are only a certain number of restricted CoS available for allocation to UK businesses each month.

When over-subscription occurs, the Home Office resorts to allocating restricted CoS only to those requests scoring the highest number of points. As points are awarded according to a set of criteria, of which the proposed level of salary is key, the normal minimum salary requirement of £20,800 is set aside in times of hardship and restricted CoS offering high-end salaries are prioritised.

In June this year, this approach led to the refusal of all requests for restricted CoS scoring fewer than 50 points and therefore offering salaries lower than £46,000. The situation improved somewhat in July as requests were refused only if they scored lower than 45 points and offered salaries below £32,000.

August saw the situation almost return to normal, with requests only refused if they scored fewer than 36 points and offered salaries of under £24,000.

When compared to the situation in June and July, this is a considerable improvement for many companies wishing to employ migrant staff. In fact, the decrease in the minimum salary requirement to only £3,200 above the original minimum requirement could indicate that things may soon return to normal.

In order for this lower minimum salary requirement to be achieved, however, the Home Office has been forced to borrow from September's restricted CoS allocation.

It can therefore only be hoped that this will not adversely affect September's allocation and that the HR needs of smaller UK businesses and those industries paying lower salaries will remain secure.

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*Speak to Smith Stone Walters today for advice on how to best avoid the effects of the migrant cap on your global HR strategy.*



# MAC URGES CAUTION OVER TIER 2 SALARY THRESHOLDS



*The Migration Advisory Committee (MAC) has urged the government to be cautious when considering raising minimum salary thresholds for Tier 2 migrant employees.*

Following the completion of 'Little MAC', the first part of its review of Tier 2 of the points based immigration system, the MAC has recommended that the government exercises caution when considering its recent proposal to increase the minimum income thresholds of Tier 2 migrant employees in the UK.

The results of this review indicate that, although a modest rise in minimum salary thresholds would only have a minimal effect on Tier 2 (General), it is not yet possible to fully identify the potential effects of such a rise on particular companies and organisations.

Another reason behind this plea for prudence is the fact that any consequence of a rise in minimum salary thresholds will be doubly felt when combined with other proposed changes, such as the skills levy.

The MAC was commissioned to examine Tier 2 shortly after the recent General Election and its review consists of two branches, affectionately nicknamed 'Little MAC' and 'Big MAC'. Whilst the 'Little

MAC' has just been completed and focussed only on the possible effects of increased Tier 2 salary thresholds for migrant workers, the 'Big MAC' is still underway and covers a far wider range of potential changes (as outlined in the Editorial, p.2)

The 'Big MAC' will be complete in December 2015 and sponsors and their legal representatives are currently being encouraged to have their say on the above matters in the meantime.



To this end, SSW team members attended a recent MAC Forum and represented our clients' views, ensuring that their best interests were represented. We are also giving our clients the chance to speak to MAC representatives directly at our free UK Immigration Seminar on 22 September 2015.

*"The results of this review indicate that...a modest rise in minimum salary thresholds would only have a minimal effect on Tier 2 (General)."*

*Do not miss this valuable opportunity to have your say on potential changes to the UK immigration systems and register for this event by email to [Lucy.C-Woodward@smithstonewalters.com](mailto:Lucy.C-Woodward@smithstonewalters.com)*

## JOIN US!

*...at our latest, FREE UK Immigration Seminar, taking place in the heart of London at the stunning One Moorgate Place on 22 September 2015.*



In a world where things move quickly, SSW aims to keep you informed. We are therefore once again inviting current and prospective clients to join us for an informative and enjoyable afternoon focussing on the hottest topics in UK immigration.

The seminar will kick off at 2pm with SSW Director, James Walters, speaking about how the latest UK immigration policy changes will affect UK employers and a panel of senior Home Office officials will be on hand, including Policy Advisor, Richard Jackson, to answer any questions.

The possibility of a skills levy on sponsor organisations and the introduction of the Immigration Health Surcharge for Tier 2 ICT applicants are among the important issues which will then be discussed by representatives from the Migration Advisory Committee, as part of their review of the Tier 2 system.

Do not miss this valuable opportunity to learn about the latest changes to corporate immigration compliance and to have your say on future UK immigration policy!

We have a limited amount of seats available so please book early to avoid disappointment!

To book your place please send an email to:  
[Lucy.C-Woodward@smithstonewalters.com](mailto:Lucy.C-Woodward@smithstonewalters.com)

## TEEING OFF FOR RAINBOW TRUST



SSW representatives and invited guests recently spent a wonderful day on the course at the Haver Castle Golf Club, where they teamed up to take part in the Rainbow Trust Annual Golf Day on 14 August 2015.

The efforts of the Rainbow Trust organisers to ward off the rain were extremely successful and golfing participants enjoyed a dry and competitive day's play. Captained by SSW Directors, James Walters and David Hugkultone, both SSW teams got into the swing of things and performed well, managing to secure a place in the top ten.

The day was a huge success and secured much needed funds for the charity which provides emotional and practical support to families with a terminally ill child.

Golfing and evening activities contributed to raising a grand total of £18,000, enough to provide six months of support for 25 of the many families who come to the Rainbow Trust Children's Charity for support each year.





# WE STRIVE TO MAKE OUR CLIENTS SAY...

*We make it our business to deliver each client with a service worth shouting about.*

*Here are a few of the most inspiring words that clients have used to describe our services this quarter.*



PROMPT AND  
DETAILED

ABOVE AND  
BEYOND

FABULOUS SERVICE

EXTREMELY  
EFFICIENT

*A quick shout out to Madhuri (SSW Mumbai) for her very prompt and detailed service!*

*D.S., global accounting firm*

*Fabulous service, great client management and a truly customer friendly approach'*

*A.H., asset management firm*

*'SSW have been an extremely efficient and prompt service provider. The attention paid to individual clients is a benchmark for anyone in the service industry.'*

*D.S., global accounting firm*

*'Keep up the good work!'*

*V.K., private client*

*Alastair (SSW UK) was most helpful during my application, he went above and beyond what was required. I will definitely be recommending SSW to anyone looking for assistance in UK immigration law.'*

*S.S., international law firm*

*'Excellent service and a wonderful experience! Thank you Adele (SSW Hong Kong)!'*

*H.S., multinational financial services provider*

*Jack (SSW New York) was extremely helpful throughout the whole visa process, making it simple for me to follow instructions and ensuring that everything ran smoothly.*

*Thank you Jack!'*

*T.S., global accounting firm*



# FOCUS

*This month, **Focus** explains the first step for any business looking to establish a hub in the UK: the acquisition of a Sole Representative Visa.*

With the UK economy going from strength to strength, Britain is maintaining its reputation as the location of choice for new European-based, inward-investment projects and more overseas businesses than ever before are looking to establish a UK hub.

For companies wishing to establish a base in the UK, the successful granting of a Sole Representative Visa is the first step in this exciting process. The Smith Stone Walters team regularly files Sole Representative Visas on behalf of overseas organisations wishing to 'touch down' in the UK.

## *What is the Sole Representative Visa?*

The primary purpose of this visa category is to allow an individual ('sole') representative of an existing overseas business to enter the United Kingdom to establish and operate a registered branch or wholly-owned subsidiary of the business in the UK.

## *What key criteria does the overseas business need to meet?*

Aside from being able to justify its motivation in establishing a presence in the UK, the company must maintain its headquarters and principal place of business outside the UK, and have no other branch, subsidiary or representative already in the UK. An application will be refused if the Entry Clearance Officer believes there is a clear intention to move the main centre of business to the UK and effectively cease trading outside the UK.

The company must also intend to operate its UK branch or subsidiary in the same type of business activity as the overseas business.

## *What key criteria does the nominated sole representative need to meet?*

Aside from being able to meet the required standard of English language skills, the individual must have already been recruited and employed outside the UK prior to the submission of the visa application. They must also intend to work only as a full-time representative of that overseas business and not to undertake any other employment upon arrival in the United Kingdom.

*"Britain is maintaining its reputation as the location of choice for new European-based, inward-investment projects"*



### *Suitably qualified candidate*

The Entry Clearance Officer will expect a suitably qualified candidate to have been selected by the business for this important role.

They would therefore anticipate the assignee to already be an established and senior employee of the overseas company and capable of undertaking this UK based assignment. Alternatively, the candidate may have only recently been employed to specifically undertake this role but should be able to demonstrate an existing track record of setting up branches for other companies.

The candidate should not be a majority shareholder in the overseas business but should hold full authority to make operational decisions on behalf of the overseas business for the purpose of representing it. In assessing the genuineness of a sole representative application, the Visa Officer will therefore wish to review documents that detail the applicant's contract of employment; their job description; and the employer's business plans.

### *What level of remuneration should a sole representative receive?*

Whilst a minimum level of pay is not prescribed by the Home Office, the salary should be appropriate for a senior employee in the company and is usually higher than other employees' salaries.

It is acceptable for sole representatives to be offered a remuneration package that consists of a basic salary and commission, as long as the salary element is enough to support the applicant and any dependent family without recourse to public funds.

### *Are there any restrictions on accompanying family members?*

As with most UK visas, the sole representative's family members (meaning spouse or long-term cohabiting partner, and children under 18) will be able to apply to accompany the main applicant to the UK. They will be granted visas for the same duration as the sole representative and the partner or spouse will be able to work for any UK employer without restriction.

### *How long is a Sole Representative Visa issued for?*

Upon approval, leave to enter the UK is usually awarded for a 3 year period with a restriction placed on the employee's stay to work only as the representative for the business which they have been admitted to represent. Sole representatives are eligible to extend their visa and, ultimately, to apply for settlement after five years in the UK providing that the conditions of their initial entry remain the same.

### *What are the key benefits most overseas companies see in using this UK visa route?*

The key advantage to the sole representative route is that no individual investment is required, unlike the Tier 1 Entrepreneur category. Furthermore, there are no specific job creation requirements, so the business can grow at its own pace (or remain small). For any existing overseas businesses looking to move into the UK quickly, and with minimal risk, this route can therefore be a promising option.

Furthermore, it is possible to sponsor additional employees to relocate to the UK and join the sole representative once the UK branch office has been established. This can be achieved as soon as the UK entity acquires a sponsor licence under the Tier 2 points based system.

### *How can Smith Stone Walters help?*

The rules surrounding UK visa entry routes are continually updated and revised. By partnering with Smith Stone Walters we can ensure that your business plans in the UK get off to the best start.

Our teams of immigration specialists based both in the UK and overseas are primed to provide the quality of UK immigration advice necessary to your business in an increasingly fast-paced and complex world.

*Moving people to the UK is our business. It is what we do best.*  
*[www.smithstonewalters.com](http://www.smithstonewalters.com)*



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